

AMENDED IN SENATE JUNE 9, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 41**

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**Introduced by Assembly Member Hill**

December 6, 2010

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An act to amend Section 87200 of the Government Code, *and to add Chapter 4 (commencing with Section 185040) to Division 19.5 of the Public Utilities Code*, relating to ~~the Political Reform Act of 1974~~, *conflicts of interest*.

LEGISLATIVE COUNSEL'S DIGEST

AB 41, as amended, Hill. ~~Conflicts~~ *High-Speed Rail Authority: conflicts of interest: disqualification: ex parte communications.*

~~Existing~~

(1) *Existing* provisions of the Political Reform Act of 1974 prohibit a public official at any level of state or local government from making, participating in making, or attempting to use his or her official position to influence a governmental decision in which he or she knows or has reason to know that he or she has a financial interest, as defined. Existing law also requires specified elected and appointed officers at the state and local level of government to disclose specified financial interests by filing periodic statements of economic interests. Existing law further requires public officials who hold specified offices and who have a financial interest in a decision within the meaning of the Political Reform Act of 1974 to publicly identify the financial interest giving rise to the conflict of interest or potential conflict of interest, recuse themselves from discussing and voting on the matter, and leave the

room until after the discussion, vote, and other disposition of the matter is concluded, except as specified.

This bill would add members of the High-Speed Rail Authority to those specified offices who must publicly identify a financial interest giving rise to a conflict of interest or potential conflict of interest, and recuse themselves accordingly.

Existing law makes a violation of the Political Reform Act of 1974 subject to administrative, civil, and criminal penalties. This bill would impose a state-mandated local program by exposing these members to potential criminal penalties for failing to make the disclosures and recuse themselves where required by this bill.

*(2) Existing law creates the High-Speed Rail Authority with specified powers and duties relative to development and implementation of a high-speed train system. Existing law provides for the authority to be governed by a 9-member board.*

*This bill would prohibit a member of the authority board and any interested person, as defined, from conducting an ex parte communication, as defined. The bill would require a board member to report an ex parte communication, as specified. The bill would require the Business, Transportation and Housing Agency to enforce these provisions under certain conditions.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 87200 of the Government Code is
- 2 amended to read:
- 3 87200. This article is applicable to elected state officers, judges
- 4 and commissioners of courts of the judicial branch of government,

members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of the High-Speed Rail Authority, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and to candidates for any of these offices at any election.

SEC. 2. Chapter 4 (commencing with Section 185040) is added to Division 19.5 of the Public Utilities Code, to read:

CHAPTER 4. EX PARTE COMMUNICATIONS

185040. (a) For purposes of this chapter, except as provided in subdivision (b), an “ex parte communication” is any oral or written communication between a member of the authority and an interested person, about a matter within the authority’s jurisdiction, that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) The following communications are not ex parte communications:

(1) Any communication between a staff member acting in his or her official capacity and any authority member or interested person.

(2) Any communication limited entirely to procedural issues, including, but not limited to, a meeting schedule, location, or format of a presentation.

(3) Any communication that takes place on the record during an official proceeding of a state, regional, or local agency that involves a member of the authority who also serves as an official of that agency.

(4) Any communication between a member of the authority, with regard to any action of another state agency or of a regional or local agency of which the member is an official, and any other official or employee of that agency.

1     185041. For purposes of this chapter, an “interested person”  
2 is any of the following:

3     (a) A potential bidder, vendor, contractor, an agent or an  
4 employee of a bidder, vendor or contractor, or a person receiving  
5 consideration for representing a bidder, vendor, or contractor  
6 interested in obtaining a contract with the authority or currently  
7 under contract to the authority.

8     (b) A firm or person with a financial interest, as described in  
9 Article 1 (commencing with Section 87100) of Chapter 7 of Title  
10 9 of the Government Code, in a matter before the authority, or an  
11 agent or employee of the firm or person with a financial interest,  
12 or a person receiving consideration for representing the firm or  
13 person with a financial interest.

14     (c) A representative acting on behalf of any civic, environmental,  
15 neighborhood, business, labor, trade, or similar organization who  
16 intends to influence the decision of an authority member on a  
17 matter before the authority.

18     185042. (a) No authority member, nor any interested person,  
19 shall conduct an *ex parte* communication unless the authority  
20 member fully discloses and makes public the *ex parte*  
21 communication by providing a full report of the communication  
22 to the executive director within seven days after the communication  
23 or, if the communication occurs within seven days of the next  
24 authority meeting, to the authority on the record of the proceeding  
25 at that meeting.

26     (b) (1) The authority shall adopt standard disclosure forms for  
27 reporting *ex parte* communications which shall include, but not  
28 be limited to, all of the following information:

29     (A) The date, time, and location of the communication.

30     (B) The identity of the person or persons initiating and the  
31 person or persons receiving the communication.

32     (C) A complete description of the content of the communication,  
33 including the complete text of any written material that was a part  
34 of the communication.

35     (2) The executive director shall place in the public record any  
36 report of an *ex parte* communication.

37     (c) Communications shall cease to be *ex parte* communications  
38 when fully disclosed and placed in the authority’s official record.

39     185043. Nothing in this chapter prohibits any person, including  
40 any interested person, from testifying at an authority hearing,

1 workshop, or other official proceeding, or from submitting written  
2 comments for the record on a matter before the authority. Written  
3 comments shall be submitted by mail or delivered to an authority  
4 office, or may be delivered to the authority at the time and place  
5 of a scheduled meeting.

6 185044. Any person, including an authority member, may  
7 request the authority staff to conduct a workshop on any matter  
8 before the authority or on any subject that may be useful to the  
9 authority.

10 185045. No authority member or alternate shall make,  
11 participate in making, or in any other way attempt to use his or  
12 her official position to influence an authority decision about which  
13 the member or alternate has knowingly had an *ex parte*  
14 communication that has not been reported pursuant to Section  
15 185042.

16 185046. The Business, Transportation and Housing Agency  
17 shall be responsible for enforcing this chapter. This section shall  
18 become operative only if legislation is enacted placing the authority  
19 within the agency.

20 ~~SEC. 2.~~

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.

30 ~~SEC. 3.~~

31 SEC. 4. The Legislature finds and declares that ~~this bill~~ Section  
32 1 of this act furthers the purposes of the Political Reform Act of  
33 1974 within the meaning of subdivision (a) of Section 81012 of  
34 the Government Code.